

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Hirokazu Yamagata et al. Art Unit : 1762
Serial No. : 09/852,090 Examiner : James Lin
Filed : May 10, 2001 Conf. No. : 5147
Title : A METHOD OF MANUFACTURING A LIGHT EMITTING DEVICE

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Pursuant to United States Patent and Trademark Office OG Notices: 12 July 2005 - New Pre-Appeal Brief Conference Pilot Program, a request for a review of identified matters on appeal is hereby submitted with the Notice of Appeal. Review of these identified matters by a panel of examiners is requested because the rejections of record are clearly not proper and are without basis, in view of a clear legal or factual deficiency in the rejections. All rights to address additional matters on appeal in any subsequent appeal brief are hereby reserved.

Claims 5, 18, 23, 28 and 33 are pending with claim 5 being independent. Claims 5, 18 and 23 have been rejected as being unpatentable over Sato (JP 07-142169); claim 28 has been rejected as being unpatentable over Sato in view of Singh (U.S. Patent No. 6,228,228); and claim 33 has been rejected as being unpatentable over Sato in view of Yamada (U.S. Patent No. 6,215,462). Applicant requests withdrawal of these rejections.

Applicant specifically asks the panel to review the issues highlighted below.

Sato does not describe or suggest forming a green luminous layer comprising the second luminous material over the red luminous layer by stopping the evaporation of the dopant while continuing the evaporation of the second luminous material, as recited in claim 5.

Recognizing that Sato does not describe this feature, the Examiner asserts that Sato would have led one of ordinary skill in the art to do so because:

The evaporation of the doped layer must proceed either 1) by stopping the evaporation of the dopant while continuing the evaporation of the host Alq

material or 2) by stopping evaporation of both materials and restarting evaporation of the host.

The Examiner then asserts that one of ordinary skill in the art would have selected the first option in order to maximize the production rate.

However, nothing in Sato or elsewhere indicates that selecting the first option would result in maximizing the production rate, or that maximizing the production rate is even desirable. For example, an approach that employed multiple chambers tailored to the different steps of the process could be used to increase overall throughput by which devices could be mass produced. Also, rather than maximizing the production rate, it may have been more desirable to tightly control the parameters under which the device was formed in order to avoid defects in the device. Thus, the Examiner has not set forth a proper motivation and, instead, has merely provided conclusions based on hindsight as to what a person of ordinary skill would have done.

In the advisory action, the Examiner appears to indicate that applicant has the burden of showing that the first option would not increase the production rate. However, this is not correct since the burden to establish a *prima facie* case of obviousness, including a motivation to select the first option, is on the Examiner. Thus, it is the Examiner who needs to provide some evidence that selecting the first option would maximize the production rate (and that maximizing the production rate is desirable).

Also, as noted in applicant's prior response, and as set forth in the present application at page 2, lines 12-17, the present inventors, who certainly qualify as persons of ordinary skill in the art, initially pursued the second approach set forth by the Examiner until their analysis of the results determined that the first approach produced better luminescence for the reasons discussed in detail in the application.

In the advisory action, the Examiner states that the passage at page 2, lines 12-17, is inconclusive as to whether evaporation of Alq₃ was halted. Applicant disagrees. When this passage is contrasted with the passage at page 3, lines 10-14 of the application, which describes the improved results obtained by not halting evaporation of Alq₃, it is clear that the passage at page 2 contemplates halting Alq₃ evaporation.

For these reasons, applicant submits that Sato would not have led one of ordinary skill in the art to form a green luminous layer comprising the second luminous material over the red

luminous layer by stopping the evaporation of the dopant while continuing the evaporation of the second luminous material, as recited in claim 5. Accordingly, the rejection should be withdrawn.

Singh and Yamada do not remedy the failure of Sato.

Claim 28 has been rejected as being unpatentable over Sato in view of Singh, and claim 33 has been rejected as being unpatentable over Sato in view of Yamada. Applicant requests reconsideration and withdrawal of this rejection because neither Singh, which is cited as showing a material for doping Alq, nor Yamada, which is cited as showing the use of organic EL devices as displays in cameras, remedies the failure of Sato to describe or suggest the subject matter of claim 5.

Applicant submits that all claims are in condition for allowance.

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: 2/8/07

Customer No. 26171
Fish & Richardson P.C.
1425 K Street, N.W. - 11th Floor
Washington, DC 20005-3500
Telephone: (202) 783-5070
Facsimile: (202) 783-2331
/adit
40397893.doc



John F. Hayden

Reg. No. 37,640